

Arizona State Agency Fee Commission Report

December 21

2012

The following agencies' fees have been reviewed: Department of Financial Institutions, State Land Department, Department of Weights and Measures, and the Department of Environmental Quality.

Commission Chair:
Representative
Amanda Reeve

Commission Members

Representative Amanda Reeve, Chair

Richard Bark, Vice Chair

Basillio Aja

Senator Frank Antenori

John Arnold

John Halikowski

Representative Katie Hobbs

Senator Jack Jackson

Spencer Kamp

Senator Lori Klein

Representative Terri Proud

Sandra Fabritz-Whitney

Table of Contents

| | |
|--|-----------|
| 2012 Reviewed Agencies | 4 |
| Preparation and Purpose | 4 |
| General Recommendations | 4 |
| Department of Financial Institutions..... | 6 |
| Agency Description | 6 |
| Methodology..... | 7 |
| Findings | 8 |
| Recommendations | 9 |
| State Land Department | 11 |
| Agency Description | 11 |
| Methodology..... | 12 |
| Findings | 12 |
| Recommendation..... | 13 |
| Department of Weights and Measures | 14 |
| Agency Description | 14 |
| Fee Structure..... | 15 |
| Methodology..... | 16 |
| Findings | 16 |
| Recommendations | 17 |
| Department of Environmental Quality | 19 |
| Agency Description | 19 |
| Purpose | 19 |
| Fee Structure..... | 19 |
| Findings | 21 |
| Air Quality Division..... | 21 |
| Air Quality Fee Fund..... | 22 |
| Air Permits Administration Fund | 23 |
| Vehicle Emissions Fund | 25 |
| Water Quality Division | 26 |
| Waste Programs Division | 27 |

| | |
|---|-----------|
| Solid Waste Fee Fund..... | 28 |
| Hazardous Waste Management Fund | 31 |
| Recycling Fund | 33 |
| Recommendations | 34 |
| 2013 Agencies to be Reviewed | 36 |

2012 Reviewed Agencies

In 2012, the State Agency Fee Commission (Commission) reviewed the fees and funding structures of four State agencies:

- Department of Financial Institutions,
- State Land Department,
- Department of Weights and Measures, and
- Department of Environmental Quality.

Preparation and Purpose

The Commission defined a “fee” as “anything that an agency charges for a specific service.” For example, charges for a license, an inspection or a training class would be considered a fee. The Fee Commission determined that penalties, charges for document copies and public record requests, land leases, and uniform fees that act as taxes are *not* considered fees.

In order to begin the process of review, the four reviewed agencies submitted the following to the Office of Strategic Planning and Budgeting (OSPb):

- an inventory of fees,
- the methodology used to set fees at the current rates,
- revenues from fees, and
- expenditures from agency funds associated with fees.

OSPb analysts examined the agencies’ programs and sought to determine whether the fees collected by each program were sufficient to cover the program’s costs. Analysts also examined the fee setting methodology the agency prescribed, and where possible, compared fees to those of other states and entities.

Because agencies that collect fees utilize a variety of funding structures, there is no uniform method of review. For example, fees for multiple programs can be associated with the same fund (e.g., the General Fund) or with several funds. Therefore, tying a specific activity to a specific fee is not always feasible. However, the Commission developed general recommendations for fees and funding structures using the best estimates possible.

General Recommendations

1. The General Fund should not benefit from program fees. Some agencies’ fees are directly deposited to, and the agency receives an appropriation from, the General Fund. Under this funding structure, in most cases the amount of the appropriation should be as close as practicable to the amount of the fees

collected. It may be acceptable to use excess fees to fund non-fee-collecting entities whose activities support the agency's mission.

2. Limit cross-subsidization among programs. When agencies have several programs with different purposes, fees collected from one program should not pay the costs of another program.

3. Fees should reflect the cost of the service. The cost of the service provided, including any direct and indirect costs, should be as close as practicable to the fee charged.

4. The General Fund should not fund specialty programs. An agency's funding structure should be such that fees are collected for specific services that the agency provides. The General Fund should only support programs that broadly benefit the public.

5. Revenues and expenditures from fees should be as transparent as possible. The State should avoid funding structures that flow fee revenues through the General Fund, allowing those revenues to be used for other purposes. Agencies should have a sound and transparent methodology of setting fees consistent with recommendations 1, 2 and 3.

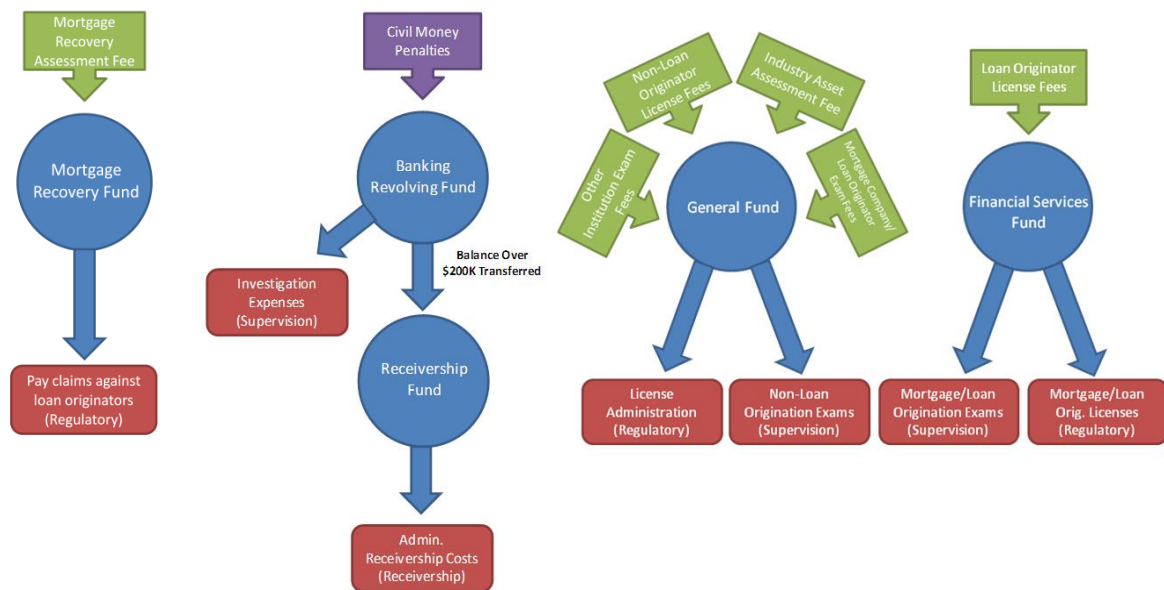
6. Agencies should continue to undergo a systematic review of their fees. Currently, agencies and the Commission must review all fees every five years. It is important that this review process be continued.

Department of Financial Institutions

Agency Description

The Department of Financial Institutions (DFI) licenses, supervises and regulates 18 types of financial institutions. Those financial institutions are composed of, but not limited to, advance fee loan brokers, State-chartered banks, State-chartered credit unions, collection agencies, mortgage companies, loan originators, consumer lenders, motor vehicle dealers, and sales finance companies. All fees, with the exception of the mortgage recovery assessment fee and loan originator license fee, are deposited into the General Fund. (Figure 1)

Figure 1 - Flow of Financial Institutions Fees and Funds



DFI has three main programs: Regulatory Affairs, Supervision, and Receivership.

- The primary functions of **Regulatory Affairs** are to license entities, investigate complaints, and promote public awareness of statutory provisions. This program is divided into two units: licensing and consumer affairs.
- The **Supervision** program involves the examination, supervision and financial analysis of over 8,500 licensees and is spread among the 18 categories of regulated entities. The program includes formal and informal regulatory enforcement actions, as necessary.
- The **Receivership** program makes DFI responsible for the management, orderly liquidation and closure of receiverships. There are no fees associated with the Receivership program.

Methodology

Although DFI charges 108 types of fees, the fees can be grouped into five categories:

- mortgage recovery assessment fees,
- license fees,
- assessment fees on industry assets,
- hourly examination fees, and
- miscellaneous fees.

Most of these fees were last changed or first established prior to 1994; therefore, the history and method of setting them were not readily available.

The *mortgage recovery assessment fee* consists of an assessment levied by the DFI Superintendent on licensed loan originators to support a minimum \$2 million Mortgage Recovery Fund balance. The assessment is optional, as loan originators are permitted to post a surety bond instead. The fee is used to provide relief to persons or parties that have suffered out-of-pocket losses from fraudulent mortgage transactions. The mortgage assessment fee supports the Regulatory Affairs program.

All *license fees* are determined by statute, except for loan originator fees, which are determined by the Superintendent through the rulemaking process. These fees support customer service representatives and pay for five mortgage loan originator examiners. In FY 2012, \$1.5 million of loan originator license fees were deposited in the Financial Services Fund, and \$2.8 million of all other licensing fees were deposited directly into the General Fund. Licensing fees are comprised of new and renewal fees, on a wide variety of disciplines that fall under DFI's purview, and are dedicated to the Regulatory Affairs program.

The *assessment fee on industry assets* is a fee charged on the total assets of State-chartered banks and credit unions. These fees are used to fund examinations of banks and credit unions and support the Supervision program. Industry asset assessment rates have not been increased in the last decade and are 59% and 70% less than the fees charged to national banks by, respectively, the National Credit Union Administration and the National Credit Unions. In FY 2012, industry asset assessment fees of \$958,000 were deposited into the General Fund. The cost to the General Fund of supporting the examination staff of State-chartered banks and credit unions in FY 2013 will be \$946,000.

Examination fees are charged on an hourly basis for all examinations of financial institutions, except for banks and credit unions. The fee was set to the statutory maximum of \$65 per hour in October 2007. Based on the goal of 1,040 of direct billable hours per examiner, this equates to \$67,600, which approximates the salary cost of an examiner with the inclusion of Employee-Related Expenses (ERE). These fees are used to support the Supervision program with a staff of 22 examiners.

Findings

Regulatory Affairs and Supervision are the only programs that are supported by fee revenue, but there is a large disparity in the fee-support levels.

- Regulatory Affairs, which is funded by all licensing fees and the mortgage recovery assessment fee, generated a \$3.1 million surplus in FY 2012.
- In contrast, the Supervision program, funded by examination fees, mortgage assessment fees, and civil money penalties, broke even.

As a result of the use of civil money penalties, funding for the Supervision program can be unpredictable. Without the use of these monies, the Supervision program would have had a \$700,000 negative balance. (Figure 2)

Figure 2 – Revenues and Expenditures by Program

| Regulatory Program (In Thousands) | FY 2012 |
|--|-------------|
| + License Fees (Excludes Loan Originators) | \$2,753.7 |
| + Loan Originator License Fees | \$1,450.6 |
| + Mortgage Recovery Assessment Fee | \$309.4 |
| + Other Revenue | \$104.5 |
| - Expenditures | (\$1,485.7) |
| Difference | \$3,132.4 |
| Supervision Program (In Thousands) | FY 2012 |
| + Examination Fees | \$511.4 |
| + Assessment Fees | \$958.2 |
| + Other Revenue | \$694.6 |
| - Expenditures* | (\$2,195.7) |
| Difference | (\$31.4) |
| *Excludes \$526.1 transfer out to Receivership Revolving Fund. | |

Beyond the lopsided program funding, DFI deposited over \$4.2 million into the General Fund in FY 2012, which generated a net surplus to the General Fund due to the Department's appropriation in FY 2012 of about \$1.5 million.

In FY 2012, DFI lacked funding to hire enough examiners to comply with national guidelines. Because the agency was unable to meet acceptable examination frequency standards, the Conference of State Bank Supervisors (CSBS) and the National Association of State Credit Union Supervisors (NASCUS) suspended its accreditation. This problem was addressed in DFI's FY 2013 budget request, and the agency has become reaccredited by CSBS and is undergoing review by NASCUS.

The suspension of accreditation was due to a lack of appropriated resources, not an overcharging of fees. Moreover, because of lowered appropriation authority, DFI has turned to other sources of funding, such as the Banking Revolving Fund, to subsidize its Supervision operations. The Banking Revolving Fund is a depository of civil money penalties. There is a conflict of interest in the agency dipping into these resources, as it arguably provides an incentive to rule against financial institutions as a way to secure operating funding.

Finally, DFI's funding structure does not align with the Commission's general recommendations to ensure transparency. By separating loan originators into a separate fund, a number of staffing firewalls cause inefficiencies in managing labor resources. For example, customer service representatives funded from the Financial Services Fund are barred from assisting in the license management of other institutions and vice versa. In addition, there is a mismatch in fee revenue and expenditures in the Financial Services Fund. Examination fees for loan originators are deposited into the General Fund instead of the Financial Services Fund, yet loan originator examiners are funded out of the Financial Services Fund by licensee fees instead of examination fees.

Recommendations

- Move DFI to a self funding structure.
- Create a single fee depository fund named the "Financial Institutions Fund."
- Eliminate the Banking Revolving Fund and the Financial Services Fund.
- Deposit all civil money penalties directly to the Receivership Fund.
- Prevent use of civil money penalties for general operating.
- Determine acceptable caps on the Receivership and Financial Services Fund.
- Recognize actual expenditure needs and increase appropriations to the Financial Institutions Fund in FY 2014.
- Set fees to the FY 2014 appropriation level.

Altering DFI's fee structure will enhance transparency of fees, eliminate conflicts of interest, and provide more efficient management of agency resources. To achieve this goal, DFI would be best served by converting to a self-funding structure in which all fees, excluding mortgage assessments, would flow into the Financial Institutions Fund (Figure 3 and Figure 4). This would be combined with eliminating the Banking Revolving Fund, to prevent the agency from utilizing civil money penalties to shore up its Supervision program. Instead, appropriation authority would be increased in the Financial Institutions Fund to realize the amount that would have been spent from the Banking Revolving Fund to support the Supervision program. Finally, caps would be placed on the Financial Institutions Fund and the Receivership Fund to prevent large cash balances from accumulating.

These changes will help reveal how much the agency actually spends and the amount of fees that are being transferred into the General Fund. If adequate funding is not appropriated, DFI should set fees in accordance with the FY 2014 appropriation level to ensure surplus revenue is not being generated by the Financial Institutions Fund.

Figure 3 – Current DFI Structure (same as Figure 1)

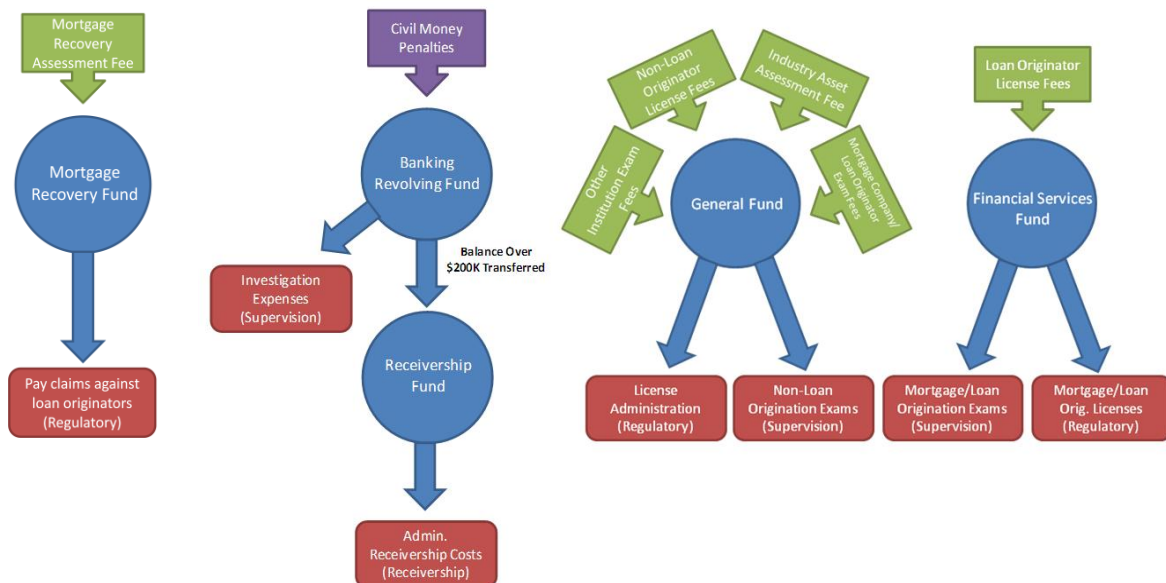
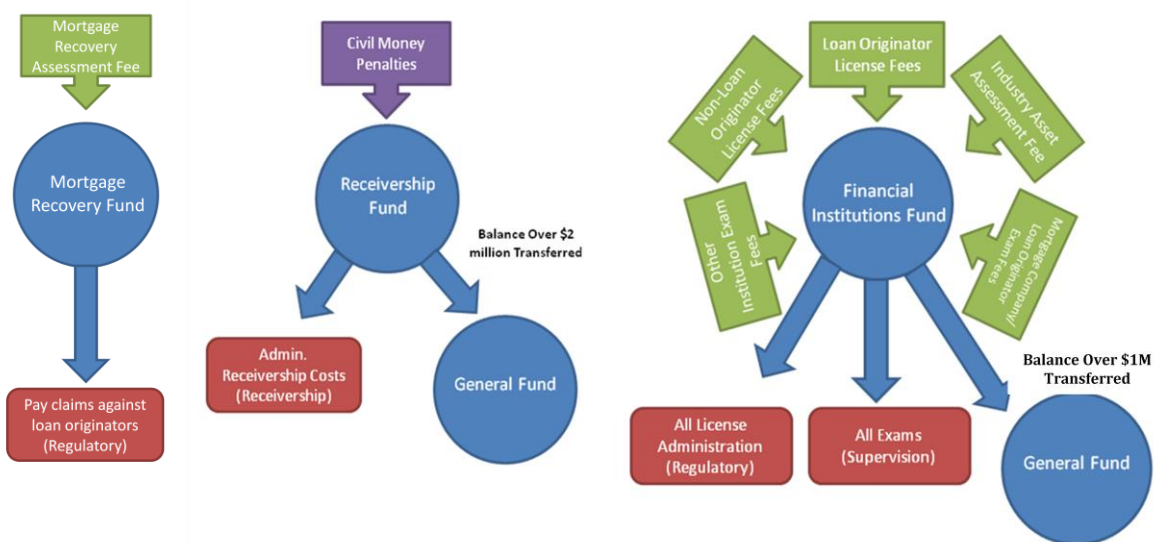


Figure 4 – Proposed Structure



State Land Department

Agency Description

The State Land Department is federally required to manage the State's 9.3 million acres of State Trust Land on behalf of 14 State beneficiaries. The Department acts as a trustee in planning, leasing and selling State Trust Land. Three programs account for the Department's operations: (1) Trust Management and Revenue Generation, (2) the Arizona Center for Geographic Information, and (3) Natural Resource Conservation Districts.

The Department's major funds include the Off-Highway Vehicle Recreation Fund, the Environmental Special Plate Fund, the Risk Management Revolving Fund, and the Trust Land Management Fund.

All fees are deposited into, and all fee expenditures are made from, the Trust Land Management Fund, which is composed of revenues generated by fees and land sales and leases. The *Rumery* lawsuit, which is on appeal before the Arizona Supreme Court, currently prevents the Department from using the sales portion of the fund. Fees are not directly affected by the *Rumery* case.

For purposes of this study, rent and lease payments were not considered fees. Therefore, all of the Department's fees (46 in total) that were examined are application fees. These application fees fall into nine categories:

- Surface Lease: agriculture, grazing, commercial
- Assignment: transferring ownership of a lease, permit or right of way
- Improvement: improve or treat state land
- Permit: temporary or recreational use of state land, urban planning
- Amendment/Agreement: sublease, amend terms, temporary right of way
- Natural Products: wood, water, minerals, oil, gas, geothermal
- Sales: preliminary applications for sale of land
- Right of Way: applications for rights of way
- Miscellaneous: replacement of lost documents, returned checks, miscellaneous filings

All fee revenues support the Trust Management and Revenue Generation Program. During FY 2008 through FY 2012, the program transitioned the deposit of fee revenues from the General Fund (GF) to the Trust Land Management Fund (TLMF).

Figure 5 – Revenues to Land Funds

| Fiscal Year | 2008 | 2009 | 2010 | 2011 | 2012 |
|-------------|-------------|-------------|-------------|-------------|-------------|
| Revenues | \$3,954,467 | \$2,858,350 | \$1,824,328 | \$3,299,881 | \$3,821,268 |
| Fund | GF | GF | GF & TLMF | GF & TLMF | TLMF |

Methodology

The Department most recently raised its fees in FY 2009. At the time of the increase, meetings were held internally in an effort to quantify and analyze the exact cost of issuing leases and selling property. Aside from a few unusual exceptions, no two leases or sales are the same, and it is essentially impossible to determine at the outset the precise cost or time required to complete a transaction.

Also in FY 2009, stakeholder meetings were held with various constituencies and Legislators in conjunction with the fee changes. At that time, fees were examined in relation to comparable competitive market rates. The Department's goal was to keep fees at a level that would not discourage potential lessees or buyers from leasing or buying property from the Department, as compared to seeking property from other private entities. Implementation of the new fee levels has been met with little negative feedback from constituent groups.

Findings

Generally, fees within the Department are not tied to activity-based expenses, because the actual cost of issuing leases and selling property is difficult to determine. Again, every lease and sale is different and can take from nine to 24 months to complete. As a consequence, fee revenue cannot be clearly compared to the costs of the processes associated with the fees. Fee levels appear to be appropriate when compared with the market. For example, when examining the Right of Way (ROW) Application fee, the Department's rate falls in the middle of similar entities.

Figure 6 – Right of Way Application Fees

| Entity | ROW Application Fee |
|---------|---------------------|
| Cities | \$33-\$1,500 |
| State | \$500 |
| Federal | \$115-\$1,089+ |

The Department's fee revenue and expenditure levels appear to be sustainable. Fee expense levels do not currently exceed those of revenues. Because of the uncertainty of the *Rumery* decision, the Department has been conservatively expending its fee revenues. A decision for or against the Department will result in major changes regarding the source of monies used for agency operations. Therefore, conservative spending practices have been put in to place in order to avoid issues with the Department's cash flows associated with these shifts.

Figure 7 – Trust Land Management Fund

| FY 2012 | |
|------------|-------------|
| Revenues | \$3,821,268 |
| Expenses | \$1,756,424 |
| Difference | \$2,064,844 |

The Department has successfully set fees at levels that do not create barriers of entry to potential purchasers or lessees with the option of seeking alternate options through other private entities. Also, the Department's fees are not currently supplementing the General Fund or any other agencies or programs which are not directly related to the fees being charged.

Recommendation

The Commission recommends that the State Land Department retain its current fee level and structure.

Department of Weights and Measures

Agency Description

The Department of Weights and Measures (DWM) is charged with protecting the integrity of Arizona's business environment by:

- ensuring that commercial measurement devices are accurate;
- verifying proper labeling of products sold by weight, measurement or count;
- ensuring that prices are posted and correctly scanned;
- maintaining the State's primary standards, which are the measurements upon which all other measurement is based; and
- preventing unfair dealing by weight, measurement or count.

DWM is also charged with helping to improve air quality by regulating Cleaner Burning Gasoline (CBG) and gas station vapor recovery systems.

Specifically, the Department has a staff that conducts a variety of regular inspections and investigations of potential fraud. Staff activities include conducting random, periodic inspections of retail stores and fueling stations to ensure that (a) prices are posted and scan correctly, (b) scales are weighing accurately, (c) liquid fuel pumps are dispensing the correct amount of fuel, and (d) packaged items sold by weight or count are correctly labeled. DWM also registers and ensures the safe and honest operation of taxicabs in Arizona.

The Department verifies the oxygenation level of motor fuels in central Arizona, as required by the State Implementation Plan (SIP) agreement with the federal government resulting from violations of air quality standards contained in the federal Clean Air Act. Additionally, per the SIP, the Department tests gas station vapor recovery systems to prevent polluting vapors from being released into the air. To ensure that gasoline meets CBG standards, DWM also audits the records of fuel suppliers.

Additionally, DWM works to fight fraud and other crimes through a number of activities, including:

- examining fuel pumps during gas station inspections for "skimmers" that are placed on credit or debit card readers;
- investigating moving scams, in which unscrupulous moving companies hold Arizonans' belongings until unsubstantiated overcharges are paid; and
- working with law enforcement agencies to fight gasoline thefts from service stations and to target illegal substance use/distribution among taxicab drivers.

DWM also manages the Arizona Metrology Laboratory, one of 19 nationally accredited labs that provide the reference standards for both industry and government standards.

These and other services have benefitted Arizona scientific and law enforcement laboratories, manufacturers, and aerospace and technology industries.

FEE STRUCTURE

DWM charges 37 separate fees, as listed in the Weights and Measures Appendix, that can be grouped into the following categories:

- Counting Devices (e.g., change machines)
- Linear Measuring Devices (e.g., hardware store rope measurers)
- Liquid Metering and Measuring Devices (e.g., propane pumps)
- Motor Fuel Devices (e.g., gasoline pumps)
- Time Measuring Devices (both taxi and non-taxi, e.g., day care centers that charge by time blocks)
- Scales
- Gas Station Vapor Recovery Construction Blueprints
- Weighmaster and Repair Contractors for Measuring Devices
- Certifications of Weight by State Metrology Laboratory

Revenues from each category of fees can be found in the Department of Weights and Measures Appendix.

Additionally, the State Metrology Laboratory charges an hourly fee for its services, but this fee is not statutory. Per A.R.S. § 41-2067(H), the Department has the authority to set this fee in rule.

All fees charged by the Department of Weights and Measures are deposited in the state General Fund, per A.R.S. § 41-2068.

DWM receives appropriations from multiple fund sources:

Figure 8 - DWM Appropriated Funds

| | FY13 Appropriation | One-Time Expenditures | FY 2013 Ongoing Appropriation |
|---|-----------------------|--------------------------|----------------------------------|
| General Fund | \$1,472,500 | (\$305,000) | \$1,167,500 |
| Air Quality Fund | \$1,419,100 | | \$1,419,100 |
| Motor Vehicle Liability Enforcement Fund | \$319,200 | | \$319,200 |
| Total: | \$3,210,800 | (\$305,000) | \$2,905,800 |

As seen in Figure 8 (above), the Department receives funding from, in addition to the General Fund, the Air Quality Fund and the Motor Vehicle Liability Insurance Enforcement Fund. Those two funds are managed by the Arizona Department of Environmental Quality (DEQ) and the Arizona Department of

Transportation (ADOT), respectively. The Air Quality Fund receives \$1.50 of each motor vehicle registration, while the Motor Vehicle Liability Insurance Enforcement Fund receives \$50 from the fee charged by ADOT for the reinstatement of a motor vehicle license and registration.

Methodology

The fee charges were initially put in place with the State's weights and measures function in Laws 1974, Ch. 200. They were most recently modified for scales, linear measuring devices, time measuring devices, weighmaster and repair contractors, and liquid metering and measuring devices in Laws 1987, Chapter 314. The fee for counting devices was added in Laws 2001, Ch. 164.

Fees for gasoline pumps were last increased in Laws 1991, Chapter 286. They were restructured into their current form in Laws 1998, Ch. 146, though it is difficult to determine whether the change from a per-nozzle fee to a per-fuel-dispenser fee amounted to an increase.

Due to the length of time since the fees were most recently changed, there is no record of the methodology used to set fees (with the exception of the hourly charges at the State Metrology Laboratory). At the State Metrology Laboratory, a comparison with nearby states determined that the Arizona fee of \$40 per hour was well below fees charged by other state labs. It was determined to raise the fee to \$110 in FY 2011, which still places Arizona toward the lower end of State Metrology Laboratory fees. A Fee Commission review of the two years since the imposition of this fee has determined that the State Metrology Laboratory fees generate an average of 74% of the lab's costs.

Findings

The fees charged by DWM are comparable with other jurisdictions.

Figure 9 – Comparison of Fees

| | Arizona | California | Texas | Utah | New Mexico |
|-----------------------------|------------------------|-------------|-----------|--------------|--------------------|
| Motor Fuel Dispenser | \$15 (\$30 vapor area) | \$.03/Gal | \$13 | \$30 | \$85/hr + \$1/mile |
| Small Scale | \$12 | \$16 | \$20 | \$30 | \$85/hr + \$1/mile |
| Large Scale | \$180 | \$200 | \$215 | \$290 | \$85/hr + \$1/mile |
| Taxi Registration | \$24/car | \$3,600/car | \$160/car | \$110/driver | \$85/hr + \$1/mile |

(Note that New Mexico's structure differs from the others; instead of charging a licensing fee, that state charges back the hourly cost plus mileage for its inspections.)

DWM's investigators are cross-trained and conduct investigations in many areas in the course of their work, depending on customer complaints, scheduled inspections, and follow-up inspections to ensure compliance. DWM also conducts periodic random or surprise inspections to further ensure fairness and consumer protection. While this flexibility is laudable from an efficiency perspective, it presents difficulties in directly associating costs to a specific industry, such as convenience stores, for DWM's services to that industry.

Accordingly, the Commission believes that it is better to take a more global view of DWM's fees and costs. In terms of costs, the FY 2013 total fund, ongoing appropriation to the Department is \$2.91 million, while its revenues from fee collections have averaged \$2.36 million over the past five years.

However, while all DWM fee revenues are deposited in the General Fund, the Department expends appropriations from multiple fund sources. As noted above, in addition to the General Fund, the Department receives funding from the Air Quality Fund and the Motor Vehicle Liability Insurance Enforcement Fund. It was noted in the October 16, 2012, Commission meeting that, because both of the other funds have fee revenues charged by other agencies, a fair comparison of DWM fees and expenses would be to isolate just the General Fund:

Figure 10 – General Fund Appropriation vs. Fee Revenues

| (In thousands) | FY08 | FY09 | FY10 | FY11 | FY12 | Average |
|---|-----------|-----------|-----------|-----------|-----------|-----------|
| GF Appropriation | \$1,640.2 | \$1,593.6 | \$1,315.6 | \$1,197.8 | \$1,165.0 | \$1,382.4 |
| Revenues | \$2,471.0 | \$2,139.0 | \$2,698.0 | \$2,375.0 | \$2,098.0 | \$2,356.2 |
| Revenues as a % of Expenditures: | 151% | 134% | 205% | 198% | 180% | 170% |

While the five-year average is a 70% excess of fee revenues over DWM's General Fund expenditures, it is worth noting that, in FYs 2008 and 2009, prior to significant budget cuts, the fees exceeded revenues by only 51% and 34%, respectively.

As can be seen above, the Department's appropriation was \$475,200 lower in FY 2012 than in FY 2008, a 29% reduction. It is unknown whether the optimum level of enforcement (and expenditures) has been achieved after the budget cuts or is better represented by the pre-cut expenditure level. While DWM has not requested a restoration of the cuts, it has reduced its workforce by six investigators. The Department reports that, in response to the cut, it has refocused its enforcement efforts from more compliant sectors of the marketplace and toward efforts to improve its overall efficiency. However, the Department notes that budget reductions have reduced the overall coverage and depth of its inspection efforts.

Recommendations

The Commission recommends no changes to the fee structure at the Department of Weights and Measures.

The Commission believes that DWM's activities should be viewed as broadly benefitting consumers. For example, without dependable standards of weights and measures, honest licensees would suffer competitively at the hands of a few dishonest operators. Additionally, the overall reputation of industry is protected by the enforcement provided by DWM and by other state agencies, ensuring that customers and other stakeholders have confidence that businesses are treating them fairly. The Commission believes that it is reasonable to expect industry to share a portion of these benefits with other State agencies that receive General Fund monies.

Fee-paying industry benefits from the actions of other agencies, primarily law enforcement, that assist in protecting the marketplace but are supported by the State General Fund and other funds for which no specific fee is charged to industry. For example, local law enforcement and the Department of Public Safety (DPS) enforce vehicle weight restrictions. The Attorney General's office protects the marketplace by handling consumer protection and civil cases for prosecution, for which no fees are charged. Furthermore, local law enforcement and DPS enforce taxicab registration requirements, with no additional fee to the taxi companies.

Thus, the Fee Commission believes that, by paying fees into the General Fund that exceed the direct cost of the Department of Weights and Measures, industry is covering some of the other direct and indirect costs that are ensuring a fair and competitive environment for business.

Department of Environmental Quality

Agency Description

PURPOSE

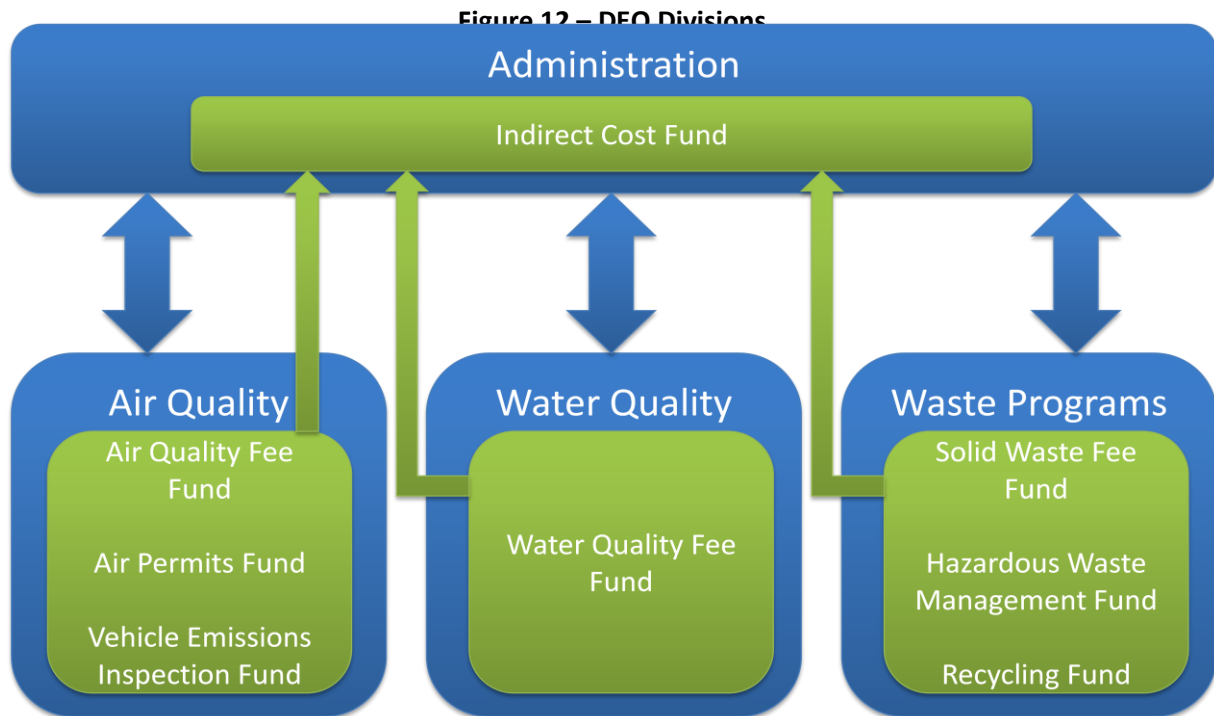
The Department of Environmental Quality (DEQ) is tasked with protecting and enhancing Arizona's public health, welfare and environment. The Department, established by the Arizona Legislature in 1986, was created to address concerns of air, water and waste pollution and to act as the State's administrator of federal environmental laws, including the Clean Air Act of 1963 and Clean Water Act of 1972. The core functions of the Department include the following:

Figure 11 – Core DEQ Functions

| Core Function | Activity |
|---|---|
| Pollution Control | Permits and approvals to ensure properly constructed facilities and healthful levels of pollution discharge |
| Monitoring and Assessment | Collects air, water, and soil samples to monitor the presence of contaminants |
| Compliance Management | Regular inspections and investigation of complaints. Guidance and incentives to reduce stakeholder waste. |
| Cleanups | Oversees the removal and remediation of contaminated soil and water. |
| Education, Outreach and Financial Assistance | Promotes environmental awareness through public involvement activities and providing useful tools and resources |
| Policy Development | Writes rules and develop statutory language changes |

FEE STRUCTURE

DEQ is organized into three main divisions that extend the core functions to Air Quality, Water Quality, and Waste Programs. Each division is financially supported by dedicated fee funds structured to produce revenue sufficient to operate their respective programs. In addition to program funding, these fee funds contribute revenue to an Indirect Cost Fund that supports the Administration Division, which provides operational support and control across the other three divisions (see Figure 12).



As Arizona’s administrator of the Clean Air Act and federal Environmental Protection Agency (EPA) air quality standards, DEQ’s **Air Quality Division** is responsible for bringing non-attainment areas back into attainment of federal standards through the execution of control measures proposed in Arizona’s State Implementation Plans. The Division is also tasked with identifying and controlling current and future sources of air pollution that harm public health and the environment.

- The Air Quality Fee Fund generates revenue from a \$1.50 surcharge collected by the Arizona Department of Transportation (ADOT) at the time any vehicle is registered in the state. The monies support the attainment of Clean Air Act standards, the reduction of air pollutants (particulates, carbon monoxide, etc.), and monitoring and reducing visible air pollution in Maricopa and Pima counties.
- The Air Permits Administration Fund collects emissions and permit fees for the purpose of issuing permits required by Title V of the Clean Air Act or Arizona Statute and conducting inspections of permitted facilities and activities.
- The Vehicle Emissions Inspection Fund receives fees charged for required vehicle inspections on an annual or biennial basis, depending on the class of vehicle. Funds are used to pay for an independent contractor to conduct the emissions tests, for the Department’s auditing and administration of the independent contractor, and for the operation of a fleet emissions inspection, exemption and waiver program.

The **Water Quality Division** is responsible for permitting, monitoring and remediation of groundwater, surface water and drinking water systems in accordance with the federal Aquifer Protection Program, Clean Water Act, Safe Drinking Water Act.

- The Water Quality Fee Fund collects permit application, annual registration, and plan review fees. Revenues are used to fund the administration of federal programs, the permit process, inspections and compliance, and the plan review of wastewater and drinking water systems.

The **Waste Programs Division** is charged with ensuring the proper handling, transportation, disposal and cleanup of solid waste. It also administers federally mandated programs for hazardous waste management and remediation, including federal Superfund sites and the Environmental Quality Act of 1986.

- The Solid Waste Fee Fund uses monies collected from registration, waste handling and plan review fees to administer a waste tire program, permit solid waste and special waste (automotive shredders) facilities, and monitor the quantity of solid waste disposal.
- The Hazardous Waste Management Fund generates fee revenue from permitting and a waste generation fee charged to facilities based on weight of hazardous waste produced. Funding is used for the permit process; compliance monitoring, investigation, and enforcement of the waste process; and hazardous waste planning, education and training for the general public and stakeholders.
- The Recycling Fund collects a fee per ton of solid waste dumped at landfills. Statutory uses include grants to political subdivisions, nonprofit organizations or private enterprise for recycling research, demonstration projects and waste reduction as well as public education regarding litter control and waste reduction. Currently, the Recycling Program is unfunded, and monies are used, along with the Solid Waste Fee Fund, to support the Solid Waste Program.

Findings

In the interest of simplicity, and because they contain similar methodologies and funding purposes, DEQ's hundreds of fees will be discussed in broad categories.

AIR QUALITY DIVISION

The Air Quality Division has two sub-programs that are separately evaluated with respect to sustainability: (1) the Air Quality Management and Analysis Program and (2) the Vehicle Emissions Inspection (VEI) Program. The Department funds most Clean Air Act obligations with the Air Quality Fee Fund, while Title V, which pertains to permitting and inspecting polluting facilities, is funded with Air Permits Administration Fund monies. The VEI Program is statutorily required to be fully funded by the fees it collects for emissions tests on vehicles.

AIR QUALITY FEE FUND

The \$1.50 surcharge on the registration of Arizona vehicles provides about \$8 million per year. Because the surcharge is set in statute and acts more as a tax, the methodology is not discussed in this report. In addition to funding DEQ's Air Quality Management and Analysis Program, the Air Quality Fee Fund provides \$1.4 million to the Department of Weights and Measures, \$1.1 million to the Department of Administration, and \$74,700 to ADOT. DEQ receives a \$5.4 million FY 2013 appropriation from the Fund.

In the past two fiscal years, DEQ has spent much less than its appropriation, due in part to fund transfer obligations and in larger part to the Department's efficient administration of federal and State air quality programs. With the economy in a slow recovery and the fund sweeps ending almost entirely for FY 2013, it is expected that the fund balance will continue to steadily grow by about \$2.5 million per year.

Figure 13 – Air Quality Fee Fund

| | FY 2011 | FY 2012 |
|---------------------------|---------------|---------------|
| + Fee Revenue | \$7,987,600 | \$8,027,700 |
| + Non-Fee Revenue | \$8,700 | \$69,100 |
| | | |
| - Expenditures | (\$2,271,300) | (\$2,694,400) |
| - Fund Transfers (sweeps) | (\$629,600) | (\$768,000) |
| - W&M Transfer | (\$1,410,300) | (\$1,437,200) |
| - ADOA Transfer | (\$1,114,100) | (\$1,114,100) |
| - ADOT Transfer | (\$42,000) | (\$74,700) |
| - Intra-agency Transfers | (\$800,000) | \$0 |
| | | |
| Difference | \$1,729,000 | \$2,008,400 |

AIR PERMITS ADMINISTRATION FUND

The fees for the Air Permits Administration Fund were last changed in rule in FY 2007 but have seen updates to rule language in FY 2012. The three fee categories for the fund are Permit Processing Fees, Annual Permit Fees, and Air Pollutant Emissions Fees.

Figure 14 – Air Permits Administration Fund

| | FY 2011 | FY 2012 |
|---------------------------|---------------|---------------|
| + Fee Revenue | \$8,385,300 | \$7,292,300 |
| + Non-Fee Revenue | \$13,900 | \$22,800 |
| | | |
| - Expenditures | (\$4,965,000) | (\$3,985,000) |
| - Fund Transfers (sweeps) | (\$2,338,200) | (\$923,400) |
| | | |
| Difference | \$1,096,000 | \$2,406,700 |

Methodology. The model adopted for the Air Permits Administration Fund (APAF) fees and extended to the Water Quality and Waste Programs divisions' fees is one in which the stakeholder pays only the actual cost for the permit process when applying for a permit. Annual permit renewal and pollution discharge fees pay for the remaining administrative and compliance/inspection costs.

The Permit Processing Fees are charged to facilities that discharge air pollutants for the service of reviewing and approving a permit. The fee is charged at an hourly rate of \$144.90 and, therefore, varies depending on the complexity of the permit review (see Figure 15 for components of hourly rate). The maximum charge for a permit that is not required by Title V of the Clean Air Act is \$25,000.

Figure 15 - Methodology: Air Quality Division Fees Hourly Rate

| Components of Hourly Rate | |
|--|-------------|
| Salary & ERE Hours Per FTE | 1,394 hours |
| Management/Admin Hours Per FTE | 400 hours |
| Federal Indirect Cost Match Percentage | 49.53% |
| Other Expenses Per FTE (Travel, equipment, etc.) | \$8,750 |
| Cost Per Hour of FTE | \$144.90 |

In order to keep a permit, each stationary source is charged an annual fee. The fee varies by facility type and is determined by the average amount of time required for the inspection of the stationary source at the \$144.90 hourly rate (see Figure 16).

Figure 16 – Fees by Stationary Source

| Stationary Source | Annual Fee | Stationary Source | Annual Fee |
|---------------------------|------------|--|------------|
| Aerospace | \$22,580 | Paper Milles | \$22,240 |
| Air Curtain Destructors | \$810 | Paper Coaters | \$16,810 |
| Cement Plants | \$69,150 | Petroleum Products Terminals | \$24,682 |
| Combustion/Boilers | \$16,810 | Polymeric Fabric Coaters | \$22,240 |
| Compressor Stations | \$13,820 | Reinforced Plastics | \$16,810 |
| Electronics | \$22,250 | Semiconductors Fabrication | \$29,240 |
| Expandable Foam | \$15,940 | Copper Smelters | \$69,150 |
| Foundries | \$21,190 | Utilities - Fossil Fuel Fired Except Coal | \$17,850 |
| Landfills | \$17,330 | Utilities - Coal Fired | \$35,360 |
| Lime Plants | \$65,320 | Vitamin/Pharmaceutical | \$17,150 |
| Copper & Nickel Plants | \$16,290 | Wood Furniture | \$16,810 |
| Gold Mines | \$16,290 | Others | \$22,250 |
| Mobile Home Manufacturing | \$16,100 | Others with Continuous Emission Monitoring | \$22,250 |

The pollution discharge fee (“emissions fee”) is set in rule at the rate of \$41.53 per ton of regulated air pollution. The EPA, as part of its 1990 revisions to the Clean Air Act, set a presumptive minimal rate to ensure that states were collecting enough revenue to cover the costs of running a permit program. States were allowed choose to enact higher or lower fees but would bear the burden of showing that revenue was sufficient. The initial rate starting in 1989 was set at \$25 per ton, adjusted annually.

DEQ adopted rules in 1993 to implement the changes to the Clean Air Act and set emissions fees at about 110% of the EPA rate. That fee level would collect enough revenue to run the entire permit program and allow for any volatility in the fee source.

The fee structure remained unchanged until 2002, when stakeholder feedback led to a new structure that deemphasized the emissions fee and created permit processing and inspection fees. The emissions fee was cut to 32-34% of the EPA rate from 2002-06 (Figure 17).

DEQ subsequently determined that, because of a lack of fee revenue, the APAF would be insolvent by November 2007. Research determined that:

“[F]ixed fees were determined to be vulnerable to the shift in sources that applied for general permits. Permitting fees were determined to be too cyclical and dependent upon economic growth. Billable emissions, on the other hand, proved to have the least amount of change year to year.” (Arizona Administrative Register, Volume 13, Issue 50, December 14, 2007, page 4385)

Figure 17 – DEQ vs. EPA Emissions Fees

| Calendar Years | Federal Presumptive Fee per Ton | DEQ Fee per Ton | DEQ % of Federal |
|----------------|---------------------------------|-------------------|------------------|
| 1994-2001 | \$29.88 - \$35.71 | \$33.00 - \$39.24 | 110-112% |
| 2002-2006 | \$36.27 - \$40.65 | \$11.75 - \$13.62 | 32-34% |
| 2007-Present | \$42.03 - \$46.73 | \$38.25 - \$41.53 | 89-91% |

The amount of billable tons of pollution changed by less than 1% from 2002-2005, causing DEQ to rely on the consistency of revenue in its fee changes in 2007. In 2007, the emissions fee was set at about 90% of the EPA rate shifting the burden of the program from annual fees to emissions fee revenues. There exists a conflict of interest in applying fees to an exact service and providing stakeholders a reliable program. Revenue has fluctuated significantly during the recession and in recent years is between \$7.3 million and \$8.4 million annually. Historical program spending has been about \$5.1 million but is likely to see upward pressure. At current levels, the fund will conservatively produce about \$1.5 million in excess revenue, or about 130% of expenditures.

VEHICLE EMISSIONS FUND

The Vehicle Emissions Inspection (VEI) Fund began collecting emissions testing fees under its newest contract in Fiscal Year 2005. The program pays a contractor a negotiated rate per test to conduct emissions testing. Statute outlines the intent for the DEQ director to set fees and that the fees should cover the total costs of the VEI program. In recent years, mid-contract renegotiations have caused excess revenues. For FY 2012, testing fee revenues were \$38.5 million compared to expenditures of \$28.4 million, or about 136% of program costs. These cost assumptions could change for FY 2014, as the VEI contract is currently under solicitation.

Figure 18 – Vehicle Emissions Fund

| | FY 2011 | FY 2012 |
|---------------------------|----------------|----------------|
| + Fee Revenue | \$36,304,000 | \$38,454,500 |
| + Non-Fee Revenue | \$34,800 | \$47,500 |
| -Expenditures | (\$24,156,500) | (\$25,064,900) |
| - Fund Transfers (sweeps) | (\$8,510,200) | (\$8,039,900) |
| - Intra-agency Transfers | \$0 | (\$3,145,700) |
| Difference | \$3,672,100 | \$2,251,500 |

WATER QUALITY DIVISION

Methodology. The Water Quality Division adopted the process applied to APAF fees when rulemaking changes for the Water Quality Fee Fund (WQFF) were created for FY 2012. The Department sought to allocate the total program costs in WQFF among three activities: Permitting, Compliance/Inspection and Administration (Figure 19). These cost assumptions were then used to raise fee amounts to generate adequate revenues in the absence of any General Fund appropriation. By using this model, the Department can more accurately charge the end user only for the services provided. However, without a funding safety net in place, the lessons learned about revenue vulnerability from permit and annual fixed fees in the APAF from FY 2002 to FY 2006 is a cause of concern.

Figure 19 – Water Quality Division Activities

| Activity | Estimated Cost |
|-----------------------|----------------|
| Permitting | \$5,307,675 |
| Compliance/Inspection | \$3,515,146 |
| Administration | \$2,436,100 |
| Total | \$11,258,921 |

Figure 20 - Water Quality Fee Fund

| | FY 2012 |
|---------------------------|---------------|
| + Fee Revenue | \$7,861,400 |
| - Water Program Expenses | (\$5,420,600) |
| - Fund Transfers (sweeps) | (\$812,200) |
| Difference | \$1,628,600 |

The WQFF funds programs for:

- groundwater (Aquifer Protection Permits, or APP),
- surface water (Arizona Pollution Discharge Elimination System, or AZPDES), and
- drinking water - Drinking Water Regulation.

In spite of their differences, the groundwater and surface water programs are designed to be funded similarly under the APAF model and are therefore discussed together.

The Drinking Water Regulation Program is the exception, as the bill to enact rule changes for fees was not passed in the 2012 Legislative Session. The program is being funded by a combination of Water Infrastructure Finance Authority (WIFA) monies and an appropriation of VEI Fund monies.

Fees. The Water Quality Division is funded by two general types of fees: permit/plan review fees and annual registration fees.

- *Permit/plan review fees* are determined by an hourly rate that is billed for the time it takes the Department to issue a permit or review a water system plan. Individual permits vary in cost, based on the exact time it takes to permit or review, whereas general permits are pre-determined based on the average number of hours to permit or review, providing most stakeholders with a known fixed cost.
- *Annual registration fees* are fixed in cost and are estimated for each type of facility or source, based on the hours required to administer the permit, including hours devoted to billing, inspections and data management (Figure 21).

Figure 21 - Methodology: Water Quality Division Fees Hourly Rate

| Components of Hourly Rate | |
|--|-------------|
| Salary & ERE Hours Per FTE | 1,394 hours |
| Management/Admin Hours Per FTE | 400 hours |
| Federal Indirect Cost Match Percentage | 49.53% |
| Other Expenses Per FTE (Travel, equipment, etc.) | \$8,750 |
| Cost Per Hour of FTE | \$122 |

The Department has calculated that about 67% of an employee's time is included in the hourly rate. Thus, 67% of the revenue for "Permitting" and "Administration" expenses is expected to come from permit/plan review fees (Figure 21). The remaining program costs are covered by annual registration fees.

FY 2012 was the first year of the new WQFF fees, and FY 2013 will be the first full year of implementation. This makes it difficult to use actual fee revenue as any indication of future projections. In its rulemaking process, the Department assumed that it would take some time for fee collections and economic conditions to normalize. Currently, the \$7.9 million collected by the WQFF in FY 2012 and \$1.8 million provided by WIFA and VEI are about 7% below the \$10.4 million WQFF appropriation.

WASTE PROGRAMS DIVISION

The Waste Programs Division fees were developed in much the same way as Air Quality and Water Quality fees, but they rely on a much smaller number of stakeholders for revenue. In the past, the Waste Programs Division was heavily funded by General Fund monies.

SOLID WASTE FEE FUND

Figure 22 - Solid Waste Fee Fund

| FY 2013 Projection | |
|--------------------------------|---------------|
| + Solid Waste Fee Fund Revenue | \$1,329,300 |
| + Recycling Fund Appropriation | \$1,200,000 |
| - Solid Waste Program Expenses | (\$2,426,600) |
| Difference | \$102,700 |

Methodology. The authorizing language that gave the Department authority to create Solid Waste fees (Laws 2011, Chapter 220) specifically states that fees should “be fairly assessed and impose the least burden and cost to the parties subject to the fees.” The Department interpreted this to mean that no class of entities should pay more than its direct and indirect costs to the Department.

Figure 23 – Cost per Activity: Waste Program

| Activity | % Employee Time Allocated | Estimated Annual Fee Revenue | % of Revenue to Program Cost |
|---------------------|---------------------------|------------------------------|------------------------------|
| Landfills | 29.0% | \$409,000 | 17.8% |
| Special Waste | 21.0% | \$198,000 | 8.6% |
| Tire Facilities | 13.0% | \$287,700 | 12.5% |
| Bio Medical Waste | 13.0% | \$135,250 | 5.9% |
| Transfer Facilities | 5.0% | \$50,000 | 2.2% |
| Septage Haulers | 3.0% | \$45,000 | 2.0% |
| General Activity | 16.0% | \$0 | 0.0% |
| Recycling Fund | N/A | \$1,174,950 | 51.0% |
| Total | 100.0% | \$2,299,900 | 100.0% |

The Recycling Fund, discussed later in this report, produces about \$2 million per year in revenue but has not operated the Recycling Program since FY 2009. In recent fiscal years, the monies have been swept to the General Fund. In FY 2013, with few exceptions, fund sweeps are no longer occurring. The Department included the use of this revenue stream in its stakeholder process, since the monies are derived from landfill fees. Including this revenue in the Solid Waste Program allowed the Department to keep fees for all classes below their cost (see Figure 23).

The fees developed for the Solid Waste Fee Fund continue with the model set with APAF by developing permit/plan review fees, annual registration fees and waste emissions fees. The General Permit, Plan Review fees, Tire Storage Site Registration, Septage Hauler Vehicle License, Landfill Registration, Biohazardous Medical Waste Transporter License, and Self Certification fees all fall under both permit/plan review and annual registration categories, by having both an initial and a renewal rate. The Special Waste Management Handling fee is emissions based. The Department also collects revenue from a Waste Tire fee that could be categorized as an emissions fee, in that it is output based, but it would be more accurate to term it as a tax or surcharge on new tires sold.

The initial fees are calculated using the Waste Division billing rate of \$122 per hour (see Figure 24). Similar to other programs, they are flat fees calculated by averaging the number of hours the Department spends in total on a class of facilities to get a per facility cost. After the initial permit/plan review process the facilities continue paying an ongoing registration cost (see Figure 25).

Figure 24 – Methodology: Waste Division Initial Fees Hourly Rate

| Components of Hourly Rate | |
|--|-------------|
| Salary & ERE Hours per FTE | 1,452 hours |
| Management/Admin. Hours per FTE | 500 hours |
| Federal Indirect Cost Match Percentage | 49.53% |
| Other Expenses per FTE (travel, equipment, etc.) | \$ 3,500 |
| Cost per Hour of FTE | \$122 |

Figure 25 – Solid Waste Fees

| Fee | Rates | |
|--|----------------|----------------|
| Plan Review of New Solid Waste Facilities | Initial | Maximum |
| Solid Waste Landfill | \$20,000 | \$200,000 |
| Non-APP requirements for Non-MSWLFs operating under an APP | \$2,000 | \$50,000 |
| Other Solid Waste Facilities Subject to Plan Approval | \$10,000 | \$100,000 |
| Modifications to Solid Waste Facility Plans | Initial | Maximum |
| Solid Waste Landfill - Type IV | \$1,500 | \$150,000 |
| Solid Waste Landfill - Type IV - RD&D | \$15,000 | \$150,000 |
| Solid Waste Landfills - Type III | \$750 | \$75,000 |
| Other Solid Waste Facilities Subject to Plan Approval - Type IV | \$750 | \$75,000 |
| Other Solid Waste Facilities Subject to Plan Approval - Type III | \$500 | \$50,000 |
| Review of Financial Responsibility Plans for Solid Waste Facilities | Initial | Maximum |
| Annual Review for Solid Waste Landfills | \$600 Flat Fee | N/A |
| Other Solid Waste Facilities | \$200 | \$5,000 |
| Solid Waste General Permits | Initial | Annual |
| Collection, Storage and Transfer – Standard | \$750 | \$100 |
| Collection, Storage and Transfer – Complex | \$7,500 | \$1,000 |
| Treatment – Standard | \$1,000 | \$100 |
| Treatment – Complex | \$10,000 | \$1,000 |
| Disposal | \$15,000 | N/A |
| Other Solid Waste Entities | Initial | Annual |
| Septage Hauler Vehicle Registration | \$250 | \$75 |
| New Waste Tire Collection Site Registration | \$500 | \$75 |
| Used Tire Site Registration | \$500 | \$75 |
| Solid Waste Facility Self-Certification – Transfer Station | \$1,000 | \$500 |
| Solid Waste Facility Self-Certification – Waste Tire Facility | \$1,000 | \$250 |

| Biohazardous Medical Waste (BMW) Transporters | Initial | Annual | Maximum |
|---|----------------|---------------|----------------|
| New BMW Transporter Registration | \$2,000 | \$750 | \$20,000 |
| Existing BMW Transporter Registration | N/A | \$750 | N/A |
| Five Year Renewal, BMW Transporter Registration | \$500 | N/A | \$20,000 |
| Amendments (after issuance): Vehicle Changes, Transportation Management Plan Revisions | \$100 | N/A | \$5,000 |

The **Special Waste Management Handling Fee** was set with input from stakeholders. It is higher than historical levels but lower than the amount set during the period of the Department's exemption from rulemaking in FY 2012. As can be seen in Figure 26, the fee at the proposed level still costs stakeholders less than the burden to the Department.

Figure 26 – Special Waste Handling and Maximum Fees

| Special Waste Handling and Maximum Fees | | | | |
|--|---------------------|---------------|---------------|---------------|
| Prior to 10/20/08 | 10/20/08 - 06/30/09 | FY 2010 | FY 2011-12 | FY 2013- |
| \$2/ton | \$4/ton | \$2/ton | \$5/ton | \$4.50/ton |
| \$20,000 Max. | \$40,000 Max. | \$20,000 Max. | \$50,000 Max. | \$45,000 Max. |

HAZARDOUS WASTE MANAGEMENT FUND

The Hazardous Waste fees are designed to cover the costs to the State of administering the EPA Hazardous Waste Permit Program. The Department has established Permit Review and Waste Generation fees.

Figure 27 - Hazardous Waste Management Fund

| | FY 2013 Projection |
|------------------------------------|---------------------------|
| + Hazardous Waste Fund Revenue | \$1,698,800 |
| - Hazardous Waste Program Expenses | (\$1,718,900) |
| Difference | (\$19,900) |

The **Permit Review fees** are calculated on a per-hour basis, with maximum amounts established to provide certainty to stakeholders while also holding the Department accountable to efficiently review permit applications (Figure 28). With such a small customer base, the Department charges an applica-

tion amount at the start of the review process in order to ensure that payments do not lag behind the services rendered (see Figure 29).

Figure 28 – Methodology: Waste Division Permit Review Fees Hourly Rate

| Components of Hourly Rate | |
|--|-------------|
| Salary & ERE Hours Per FTE | 1,402 hours |
| Management/Admin Hours Per FTE | 500 hours |
| Federal Indirect Cost Match Percentage | 49.53% |
| Other Expenses Per FTE (Travel, equipment, etc.) | \$3,500 |
| Cost Per Hour of FTE | \$136 |

Figure 29 – Fees by License Type

| License Type | Application Fee | Maximum Fee |
|--|-----------------|-------------|
| Permit for Container Storage / Container Treatment Facility | \$20,000 | \$250,000 |
| Permit for Tanks Storage / Tank Treatment Facility | \$20,000 | \$300,000 |
| Permit for Surface Impoundment Facility | \$20,000 | \$400,000 |
| Permit for Incinerator / Boiler and Industrial Furnace (BIF) / Landfill / Miscellaneous Unit Facility | \$20,000 | \$500,000 |
| Permit for Waste Pile / Land Treatment / Drip Pad / Containment Building / Research, Development, and Demonstration Facility | \$20,000 | \$300,000 |
| Corrective Action Permit / Remedial Action Plan (RAP) Approval | \$20,000 | \$300,000 |
| Post-Closure Permit | \$20,000 | \$400,000 |
| Closure of Container / Tank / Drip Pad / Containment Building | \$5,000/unit | \$100,000 |
| Closure of Miscellaneous Unit / Incinerator / BIF / Surface Impoundment / Waste Pile / Landfill / Land Treatment Unit | \$5,000/unit | \$300,000 |
| Class 1 Permit Modification (requiring Director's Approval) | \$1,000 | \$50,000 |
| Class 2 Modification | \$5,000 | \$250,000 |
| Class 3 Modification (for Incinerator, BIF, Surface Impoundment, Waste Pile, Landfill / Land Treatment Unit) | \$20,000 | \$400,000 |
| Class 3 Modification (all facilities except for Incinerator, BIF, Surface Impoundment, Waste Pile, Landfill / Land Treatment Unit) | \$10,000 | \$250,000 |

The **Waste Generation fees** are emissions-based and provide revenue for compliance inspections of waste sites. The Department used an extensive stakeholder process to test different fee levels and fee maximums for their impact on equity to stakeholders and small businesses. For example, in order to

generate the same amount of revenue with a lower maximum fee, the cost per ton must increase, placing the burden of program costs on smaller waste producers.

The Department believes that having fee maximums, or caps, not only provides stakeholders with defined costs but provides a more consistent revenue source. Using FY 2010 data, the Department determined that about 60% of program costs were attributable to large quantity generators (LQG) of hazardous waste, with the remaining 40% to small quantity generators (SQG). Federal regulations define large quantity generators as producers of more than 2,200 pounds of hazardous waste a month. The distribution of costs can vary each year, but under the final fee and fee cap set, the Department believes it has adequately protected both LQG and SQG interests while properly funding the program. Figure 30 shows the final fees set in rule for each type of waste facility.

Figure 30 – Fees by Waste Facility Type

| Facility Type | Fee per Ton | Maximum per Site |
|---|-------------|------------------|
| Generators that ship waste off site | \$67.50 | \$200,000 |
| Owners that dispose of waste on site | \$270 | \$5,000,000 |
| Generators disposing on a site they own | \$27 | \$160,000 |

RECYCLING FUND

Recycling Fund revenue is generated from a Landfill Disposal Fee of \$0.25 per ton of solid waste disposed of at all landfills regulated by the Department. The Legislature established the Recycling Program in 1999 to support a grant and education program to encourage waste source reduction and control litter. It was not changed with other Waste Programs Division fees for FY 2013. The program has not passed out grants since FY 2009, with about \$10.7 million swept from FY 2008 to FY 2012. For FY 2013, a \$1.2 million appropriation was made for use in the Solid Waste Program. The Department has a request for FY 2014 to use the rest of the \$1.9 million estimated revenue for Recycling Program grants.

Figure 31 - Recycling Fund

| | FY 2013 Projection |
|-------------------------------------|--------------------|
| + Recycling Fund Revenue | \$1,894,900 |
| - Solid Waste Program Appropriation | (\$1,200,000) |
| Difference | \$694,900 |

Recommendations

Keep the current fee structure unchanged while continuing to monitor and adjust fee levels as necessary to produce proper revenue for programs.

Over the last few years, the Department's fee structure has undergone a radical change, and it will take 3-4 years to make a complete determination on each fee's ability to support programming.

After years of underfunding and near insolvency, in the last two years, the Air Permits Administration Fund produced about 30 percent more revenue than was needed for operations. However, Federal Clean Air Act changes are expected in the near future that may impose additional costs on the state. DEQ should monitor the impact of clean air act changes and the impact on program costs. If costs do not grow in the near term, fee levels should be reduced to match program costs.

Water Quality Fee Fund changes for groundwater and surface water programs were implemented for FY 2012, and the new fee amounts appear to have adequately funded these programs. However, the drinking water program still does not have a long-term funding source and will require fees for ongoing operations or a dedicated appropriation from another fund. Again, while it appears the fee structure is appropriate, DEQ should continue to monitor revenue and expenditure levels and adjust fees as necessary.

Waste Program Division changes are mostly new for FY 2013. The Solid Waste Fee Fund, with assistance from Recycling Fund revenues, is projected to produce enough revenue for operations of solid waste programs, while projections for Hazardous Waste Management Fund revenues are within 1 percent of fully funding hazardous waste programs. The amount of data that can be relied on for projections is very small and unreliable so only time will tell if resources are truly adequate.

DEQ should be allowed to utilize revenues from the VEI and Air Quality Fee Funds as general purpose monies.

The Air Quality Fee Fund produces between \$2.0 million and \$2.5 million per year more than the associated programs. However, no specific services are provided for the fee and the fee is generally applied making it more a tax than a fee. Further, the Department has a need for a flexible revenue stream in order to backfill any programs with volatile revenue or to provide resources for department wide projects. The Air Quality fee fund can and should play that role.

The VEI fund has also overproduced in the last few years. However, the VEI contract is currently out to bid and that situation may change. Further, while the fee covers the cost of the contract, the Commission believes that the broad scope of environmental harm caused by vehicles makes this fund appropriate for any statutory use in all divisions. Currently the Director has broad authority to set VEI charges. To prevent potential abuse of this fund, the Legislature should set a statutory cap of 140 percent of contract costs.

DEQ should be allowed to utilize revenues from the Recycling Fund to fulfill the original intent.

The Recycling Fund has received an average of \$2 million annually from the landfill disposal fee. The Recycling Program was suspended beginning FY 2009, and in recent years was used to help balance the State's budget. Approximately \$1.2 million from the Recycling Fund is now being used to support DEQ's Solid Waste Program. DEQ should use the balance of the annual revenue to reestablish the Recycling Program, which provides grants to recycling programs preventing costly construction of additional landfills.

2013 Agencies to be Reviewed

In 2013, the Fee Commission plans on reviewing the following agencies:

- Office of Administrative Hearings
- Department of Corrections
- Department of Health Services
- Industrial Commission
- Department of Liquor Licenses and Control
- State Parks Board
- Pioneers' Home
- Department of Veterans' Services
- Department of Water Resources

Additionally, the Commission will be studying the nature of indirect costs relating to fees.